BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
FIRST FEDERAL SAVINGS AND LOAN)
ASSOCIATION OF ALTADENA)

Appearances:

For Appellant: Walter S. McEachern, Attorney at Law; John I. Bolen, Certified Public Accountant

For Respondent: Jack Rubin, Assistant Counsel

O P I N I O N

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of First Federal Savings and Loan Association of Altadena to proposed assessments of additional franchise tax in the amounts of $3,316.04, $592.30, $271.35 and $422.10 for the income years 1949, 1950, 1952 and 1953, respectively. Before the Franchise Tax Board acted on its protests, Appellant paid the additional tax assessed for the 1952 and 1953 income years, and therefore as to those years, Appellant's appeal will be treated under Section 26078 as an appeal from the denial of claims for refund,

Appellant derived a major portion of its revenue from veterans' home loans made pursuant to the Servicemen's Readjustment Act of 1944. The latter provided for Federal Government insurance of veterans* loans, but did not authorize any Federal instrumentality to purchase these loans from the lending institutions. Without such authorization lending institutions were limited as to the amount of veterans' loans which could be made because of the-limited resources at their command. Subsequent to 1944, the Federal National Mortgage Association was given a rather restricted authority to purchase some veterans' loans and thereby provide a reserve market for lending institutions.

In April, 1948, the Veterans' Organizations Council of Altadena (hereinafter referred to as VOCA) was formed at the instigation and under the direction of Appellant's president, It was financed by contributions received from Appellant and from various individuals having building and housing interests. VOCA engaged in a campaign with respect to veterans' loans, expending considerable sums of money in printing pamphlets and distributing them among

various organizations interested in veterans' welfare, in paying the traveling expenses of speakers, in making up displays for education of the public, in sending paid representatives to Washington, D. C,, and in paying professional public relations people, VOCA was formally disbanded in February, 1950, after Congress expanded the secondary market for veterans' loans by enactment of Public Law Number 387, on October 25, 1949, and the Housing Act of 1950.

In 1949 Appellant contributed $51,083.25 to VOCA and, in addition, spent $30,845.92 directly through its own account in payment of further expenses of the VOCA campaign. In 1950 Appellant spent $14,807.34 on this campaign, either directly or by way of contrib utions to VOCA. Appellant deducted expenditures for the VOCA campaign as business expenses in its returns for the income years 1949 and 1950, respectively.

Appellant received $6,783.75 and $5,276.25 as dividends from the Federal Home Loan Bank during the income years 1952 and 1953, respectively. Appellant did not include these dividends in its gross income in its franchise tax returns for those income years.

Respondent determined that the expenditures for the VOCA campaign were costs of carrying on propaganda or otherwise attempting to influence legislation and were not deductible, Respondent also determined that the dividends received from the-Federal Home Loan Bank should properly have been included in gross income as measurement for the franchise tax.

A recent United States Supreme Court decision makes it clear that amounts spent to influence legislation are not deductible. In Cammarano v. United States, 358 U.S. 498, the issues involved the interpretation and validity of a United States Treasury Regulation which provided in pertinent part that no deduction shall be allowed for "sums of money expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda, including advertising- other than trade advertising,. .." The Treasury Regulation under consideration is substantially the same as a Franchise Tax Board Regulation, Title 18, California Administrative Code, Regulation 24121k-24121k.1, and there is no material difference in the statutes under which the regulations were issued. In the Cammarano case the United States Supreme Court held that sums paid by the petitioners to-organizations which expended-them-in extensive publicity programs designed to persuade the voters to

cast their ballots against state initiative measures, even though the passage of those measures would have seriously affected, or indeed wholly destroyed, the taxpayers* business, were nondeductible under the regulation and that the regulation so interpreted was a valid exercise of the Commissioner's rulemaking power. The court rejected the contention that the regulation could not properly be construed as applicable to expenditures made in connection with efforts to promote or defeat the passage of legislation by persuasion of the general public as distinguished from direct influence on legislative leaders.

The determination of the Franchise Tax Board is presumed correct and Appellant has the burden of proving that it is entitled to the deductions which it claims. (City Ice Delivery Co. v. U. S., 176 Fed, 2d 347; Thomas J. Barkett, 31 T.C. 1126; Herbert Davis, 26 T.C. 49; Todd v. McColgan, 89 Cal. App. 2d 509.) Appellant makes the assertion, unsupported by any evidence, that "legislation was only an incident of such expenditures." The burden of proof may not be shifted by a mere assertion, (Todd v. McColgan, supra.) We conclude, in accordance with the finding of the Franchise Tax Board, that the expenditures were made for the purpose of influencing legislation. It follows that no deduction for them is permissible.

Appellant attacks the constitutionality of the inclusion in income of the Federal Home Loan Bank stock dividends for the income years 1952 and 1953 on the theory that the dividends are exempt. The tax here imposed is a tax upon the privilege of doing business within this State. While the tax is measured by net income, it is not a tax on that income, It is settled that exempt-income--may be included in the measure of the tax. (Pacific Co., Ltd. v. Johnson, 285 U.S. 480.)

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of First

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Federal Savings and Loan Association of Altadena to proposed assessments of additional franchise tax in the amounts of $3,316.04 and $592.30 for the income years 1949 and 1950, respectively, be and the same is hereby sustained; and, pursuant to Section 26077 of the Code, that the action of the Franchise Tax Board in denying the claims of First Federal Savings and Loan Association of Altadena for refund of franchise tax in the amounts of $271.35 and $422.10 for the income years 1952 and 1953, respectively, be and the same is hereby sustained,

Done at Sacramento, California, this 20th day of April, 1960, by the State Board of Equalization.

John W. Lynch, Chairman

George R. Reilly, Member

Richard Nevins, Member

_____, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary